

under § 812.30(a), has approved the supplemental application relating to that part of the investigation (see § 56.103(a)).

[50 FR 25909, June 24, 1985; 50 FR 28932, July 17, 1985, as amended at 61 FR 51531, Oct. 2, 1996; 63 FR 64625, Nov. 23, 1998]

§ 812.36 Treatment use of an investigational device.

(a) *General.* A device that is not approved for marketing may be under clinical investigation for a serious or immediately life-threatening disease or condition in patients for whom no comparable or satisfactory alternative device or other therapy is available. During the clinical trial or prior to final action on the marketing application, it may be appropriate to use the device in the treatment of patients not in the trial under the provisions of a treatment investigational device exemption (IDE). The purpose of this section is to facilitate the availability of promising new devices to desperately ill patients as early in the device development process as possible, before general marketing begins, and to obtain additional data on the device's safety and effectiveness. In the case of a serious disease, a device ordinarily may be made available for treatment use under this section after all clinical trials have been completed. In the case of an immediately life-threatening disease, a device may be made available for treatment use under this section prior to the completion of all clinical trials. For the purpose of this section, an "immediately life-threatening" disease means a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment. For purposes of this section, "treatment use" of a device includes the use of a device for diagnostic purposes.

(b) *Criteria.* FDA shall consider the use of an investigational device under a treatment IDE if:

(1) The device is intended to treat or diagnose a serious or immediately life-threatening disease or condition;

(2) There is no comparable or satisfactory alternative device or other therapy available to treat or diagnose

that stage of the disease or condition in the intended patient population;

(3) The device is under investigation in a controlled clinical trial for the same use under an approved IDE, or such clinical trials have been completed; and

(4) The sponsor of the investigation is actively pursuing marketing approval/clearance of the investigational device with due diligence.

(c) *Applications for treatment use.* (1) A treatment IDE application shall include, in the following order:

(i) The name, address, and telephone number of the sponsor of the treatment IDE;

(ii) The intended use of the device, the criteria for patient selection, and a written protocol describing the treatment use;

(iii) An explanation of the rationale for use of the device, including, as appropriate, either a list of the available regimens that ordinarily should be tried before using the investigational device or an explanation of why the use of the investigational device is preferable to the use of available marketed treatments;

(iv) A description of clinical procedures, laboratory tests, or other measures that will be used to evaluate the effects of the device and to minimize risk;

(v) Written procedures for monitoring the treatment use and the name and address of the monitor;

(vi) Instructions for use for the device and all other labeling as required under § 812.5(a) and (b);

(vii) Information that is relevant to the safety and effectiveness of the device for the intended treatment use. Information from other IDE's may be incorporated by reference to support the treatment use;

(viii) A statement of the sponsor's commitment to meet all applicable responsibilities under this part and part 56 of this chapter and to ensure compliance of all participating investigators with the informed consent requirements of part 50 of this chapter;

(ix) An example of the agreement to be signed by all investigators participating in the treatment IDE and certification that no investigator will be

added to the treatment IDE before the agreement is signed; and

(x) If the device is to be sold, the price to be charged and a statement indicating that the price is based on manufacturing and handling costs only.

(2) A licensed practitioner who receives an investigational device for treatment use under a treatment IDE is an “investigator” under the IDE and is responsible for meeting all applicable investigator responsibilities under this part and parts 50 and 56 of this chapter.

(d) *FDA action on treatment IDE applications*—(1) *Approval of treatment IDE’s*. Treatment use may begin 30 days after FDA receives the treatment IDE submission at the address specified in § 812.19, unless FDA notifies the sponsor in writing earlier than the 30 days that the treatment use may or may not begin. FDA may approve the treatment use as proposed or approve it with modifications.

(2) *Disapproval or withdrawal of approval of treatment IDE’s*. FDA may disapprove or withdraw approval of a treatment IDE if:

(i) The criteria specified in § 812.36(b) are not met or the treatment IDE does not contain the information required in § 812.36(c);

(ii) FDA determines that any of the grounds for disapproval or withdrawal of approval listed in § 812.30(b)(1) through (b)(5) apply;

(iii) The device is intended for a serious disease or condition and there is insufficient evidence of safety and effectiveness to support such use;

(iv) The device is intended for an immediately life-threatening disease or condition and the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the device:

(A) May be effective for its intended use in its intended population; or

(B) Would not expose the patients to whom the device is to be administered to an unreasonable and significant additional risk of illness or injury;

(v) There is reasonable evidence that the treatment use is impeding enrollment in, or otherwise interfering with the conduct or completion of, a con-

trolled investigation of the same or another investigational device;

(vi) The device has received marketing approval/clearance or a comparable device or therapy becomes available to treat or diagnose the same indication in the same patient population for which the investigational device is being used;

(vii) The sponsor of the controlled clinical trial is not pursuing marketing approval/clearance with due diligence;

(viii) Approval of the IDE for the controlled clinical investigation of the device has been withdrawn; or

(ix) The clinical investigator(s) named in the treatment IDE are not qualified by reason of their scientific training and/or experience to use the investigational device for the intended treatment use.

(3) *Notice of disapproval or withdrawal*. If FDA disapproves or proposes to withdraw approval of a treatment IDE, FDA will follow the procedures set forth in § 812.30(c).

(e) *Safeguards*. Treatment use of an investigational device is conditioned upon the sponsor and investigators complying with the safeguards of the IDE process and the regulations governing informed consent (part 50 of this chapter) and institutional review boards (part 56 of this chapter).

(f) *Reporting requirements*. The sponsor of a treatment IDE shall submit progress reports on a semi-annual basis to all reviewing IRB’s and FDA until the filing of a marketing application. These reports shall be based on the period of time since initial approval of the treatment IDE and shall include the number of patients treated with the device under the treatment IDE, the names of the investigators participating in the treatment IDE, and a brief description of the sponsor’s efforts to pursue marketing approval/clearance of the device. Upon filing of a marketing application, progress reports shall be submitted annually in accordance with § 812.150(b)(5). The sponsor of a treatment IDE is responsible for submitting all other reports required under § 812.150.

[62 FR 48947, Sept. 18, 1997]